18

Unreported

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~150.~~ 243

BALTIMORE AND OHIO RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE W. PERRINE AND CELINA PERRINE, HIS WIFE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED JANUARY 4, 1870.

Dec. 1871

SUPREME COURT OF THE UNITED STATES.

No. 459.

BALTIMORE AND OHIO RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE W. PERRINE AND CELINA PERRINE, HIS WIFE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Order docketing case on removal from State court	1	1
Certified copies, papers, and orders from State court	2	1
Docket entries after removal	23	15
Amended declaration	25	16
Demurrer to declaration	39	24
Joinder in demurrer	42	26
Hearing of demurrer and order overruling same	43	27
Plea	43	27
Trial	44	27
Verdict, motion for new trial and hearing of same	45	28
Order granting new trial unless plaintiffs remit $3,000 of verdict	46	29
On plaintiffs remitting $3,000, motion for new trial overruled and judgment entered	46	29
Bond for supersedeas	47	30
Order for supersedeas	48	30
Bill of exceptions	48	30
Exhibit "A." Articles of agreement between Central Ohio Railroad Company and Baltimore and Ohio Railroad Company	57	35
Record of proceedings of meeting of stockholders of Central Ohio Railroad Company	64	39
Clerk's certificate	66	40
Writ of error	67	40
Citation and return to same	68	40

1 Circuit court of the United States of America for the eastern district of Wisconsin.

UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held according to law, at the city of Milwaukee, in said district, on the first Monday (being the third day) of October, A. D. 1870—

Present and presiding, the Honorable Thomas Drummond, circuit judge; and the Honorable Andrew G. Miller, district judge; Charles S. Hamilton, marshal; Edward Kurtz, clerk—

Among other, the following proceedings were had, to wit:

GEORGE W. PERRINE & CELINA PERRINE, his wife,
vs.
BALTIMORE & OHIO RAILROAD COMPANY. } At law.

Be it remembered that, heretofore, to wit, at a stated term of the circuit court of the United States for the district of Wisconsin, begun and held according to law, at the city of Milwaukee, on the second Monday (being the fourteenth day) of September, A. D. 1868, and on the nineteenth day thereof, to wit, on the tenth day of November, A. D. 1868, the following proceedings were had, to wit:

Order docketing case on removal from State c't.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
vs.
BALTIMORE & OHIO RAILROAD COMPANY. } At law.

This day came the defendant's counsel, Messrs. Finches, Lynde & Miller, and presented to the court copies of the process and pro-
2 ceedings in this case, certified from the circuit court for Milwaukee County, within this district, and of the bond and order of said court, for the removal of said cause to this court according to law. Whereupon it is ordered by the court that the said certified copies be filed and that the cause be entered on the law docket of this court and be proceeded in, in the same manner as if it had been commenced here by original process; which certified copies are as follows:

Certified copies from State court.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife, pl'ffs,
against
BALTIMORE & OHIO RAILROAD COMPANY, def't. } Summons for relief; com. (served.)

To the above named defendant.

SIR: You are hereby summoned and required to answer the complaint in this action of which a copy is herewith served upon you, and

serve a copy of your answer on us at our office, No. 21 Chamber of Commerce building, Milwaukee, Wisconsin, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint as aforesaid, the plaintiffs will apply to the court for the relief demanded in the complaint.

Dated Milwaukee, Sept. 24, 1868.

PALMER, HOOKER & PITKIN,
Plaintiffs' Attorneys.

Filed Sept. 24, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife, pl'ffs,
ag'st
BALTIMORE & OHIO RAILROAD COMPANY, def't.

3 The plaintiffs above-named, by Palmer, Hooker & Pitkin, their attorneys, respectfully show to the court, & allege that the above-named defendant, the Baltimore & Ohio Railroad Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Maryland; that, at the times hereinafter mentioned, the said defendant was using & operating a certain railroad running from Bell Air, in the State of Ohio, to the city of Columbus, in said State of Ohio, together with the track, cars, locomotives, and other apparatus thereto belonging, & was a common carrier of passengers thereupon for hire between said places; that, on the 25th day of January, A. D. 1868, the said defendant received the above-named plaintiff, Celina Perrine, into one of their passenger cars for the purpose of conveying her therein & upon said railroad as a passenger from said Bell Air to said city of Columbus for the sum of four dollars & forty-five cents. or thereabouts, to the said defendant paid by the above-named plaintiff, George W. Perrine, who is the husband of said Celina Perrine; that the car used by the said defendant to convey the said Celina Perrine & the track of the said road near Spencer's station, in the county of Guernsey, Ohio, between Bell Air & Columbus aforesaid, were at the time defective and unsound, & unfit to be used for that purpose which the said defendant might and would then & theretofore have known by due care; but, not regarding their duty, they negligently suffered them to be used, & while said car was proceeding with the plaintiff therein from Bell Air to Columbus aforesaid, it was, by reason of said defects & unsoundness, & the negligence of said defendant & its agents, thrown from the track near Spencer's station aforesaid, & the thigh bone of the said plaintiff, Celina Perrine, was fractured, & she sustained other severe bruises & injuries, & that, by reason thereof, she became for a long time seriously ill, & the said plaintiff, George W. Perrine, was obliged & did actually expend a large sum of money for surgical and other treatment and attendance in attempting to cure the said Celina Perrine; & that
4 the said Celina Perrine, by reason of said injuries, has become a cripple for life, & was otherwise injured, to her damage twenty thousand dollars:

Wherefore these plaintiffs demand judgment against said defendant for the sum of twenty thousand dollars, besides the costs of this action.

PALMER, HOOKER & PITKIN,
Plaintiffs' Attorneys.

STATE OF WISCONSIN,
Milwaukee County, ss:

Celina Perrine, being duly sworn, says that she is one of the above-named plaintiffs; that she has heard read the foregoing complaint, & knows the contents thereof, & that the same is true to her own knowledge, except as to those matters therein stated on information and belief, & as to those matters she believes it to be true.

CELINA PERRINE.

Subscribed & sworn to before me this 25th day of Sept., A. D. 1868.
C. A. LOVELAND,
Notary Public, Mil. Co., Wis.

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine et al. ag'st Baltimore & Ohio Railroad Company. Copy, summons, & complaint. Palmer, Hooker & Pitkin, pl'ffs att'ys. Filed Sept. 24, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
against
BALTIMORE & OHIO RAILROAD COMPANY.

STATE OF WISCONSIN,
Milwaukee County, ss:

Celina Perrine, being duly sworn, says that she is one of the plaintiffs in the above-entitled action, and that the above-named plaintiff, George W. Perrine, is her husband; that said plaintiffs reside in the city of Mil-
5 waukee & State of Wisconsin; that the above-named defendant, the Baltimore & Ohio Railroad Company, is a foreign corporation duly incorporated & existing under and by virtue of the laws of the State of Maryland, and has property in the county of Milwaukee, within the State of Wisconsin, to wit: seven freight cars; that a cause of action exists in favor of the above-named plaintiffs against the said defendant; that said cause of action arises out of a wrongful act, sounding in tort, committed by said defendant & its agents; that, on or about the 25th day of January, A. D. 1868, the said defendant received this deponent into one of the passenger cars used by said defendant for the purpose of conveying her therein upon the said railroad, controlled & operated by said defendant, as a passenger from Bell Air, Ohio, to Columbus, Ohio, for a valuable consideration paid by the above-named plaintiff, George W. Perrine, to said defendant; that the car used by said defendant to convey this deponent, and the track of the railroad used and operated by said defendant in the neighborhood of Spencer's station, in Guernsey County, Ohio, between Bell Air and Columbus aforesaid, were both at the aforesaid time, defective and unsound, and unfit to be used for the transportation of passengers, which the said defendant might and would then and theretofore have known by due care; but not regarding its duty, the said defendant negligently used them and suffered them to be used, and while said car was proceeding with this deponent therein at or near said Spencer's station, said car was, by reason of the defectiveness and unsoundness of said car and of said track, and of the negligence of said defendant and its agents, thrown

from the track, and this deponent was thereby seriously injured, her thigh-bone was fractured, and this deponent sustained other severe injuries and bruises, by reason of which she will be a cripple for life; and the plaintiff thereby sustained damages in the sum of twenty thousand dollars, which the said defendant has not paid, nor any portion of the same; that the summons in this action has been placed in the
6 hands of the sheriff of Milwaukee County for service, and that said sheriff has returned said summons with an endorsement, that he has been unable to find said defendant within the said county of Milwaukee, that the said defendant cannot, after due diligence, be found within this State, and that this court has jurisdiction of the subject-matter of this action.

Deponent further says, upon information and belief, that D. W. Carlisle, who resides at the city of Milwaukee, in the State of Wisconsin, is an agent of the above-named defendant, & that said Carlisle is now within the State of Wisconsin.

CELINA PERRINE.

Subscribed & sworn to this 25th day of Sept., A. D. 1868, before me.
C. A. LOVELAND,
Notary Public, Mil. Co., Wis.

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine et al. ag'st Baltimore & Ohio Railroad Company. Aff't for attachment. Palmer, Hooker & Pitkin, pl'ffs' att'ys. Filed Sept. 24, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, HIS wife, pl'ffs,
against
BALTIMORE & OHIO RAILROAD COMPANY, DEF'T.

It appearing from the affidavit of Celina Perrine, one of the above-named plaintiffs, that a cause of action exists in favor of the above-named plaintiffs & against the above-named defendant; that said defendant is a foreign corporation & has property in the county of Milwaukee, within the State of Wisconsin; that the cause of action arises out of the wrongful act, sounding in tort, committed by said defendant & its
7 agents, & that this court has jurisdiction of the subject-matter of this action, & that said defendant cannot, after due diligence, be found within this State; & it appearing, to my satisfaction, that a cause of action exist' in favor of said plaintiffs against said defendant, sounding in tort, for the sum of twenty thousand dollars, within the provisions of chapter 29 of the general laws of the State of Wisconsin for the year 1868; & it appearing that D. W. Carlisle, of the city of Milwaukee, & State of Wisconsin, is an agent of said defendant, & that he is now within the State of Wisconsin: It is ordered that the plaintiffs in this action proceed by attachment against the property of the above-named defendant within the State of Wisconsin, in the circuit court of Milwaukee County; & the amount of property in value to be attached, is hereby fixed at twenty thousand dollars; & it is also ordered that a copy of the summons & complaint, & the said affidavit of said Celina Perrine & this order of attachment, together with the

attachment & inventory of property attached, be served upon said D. W. Carlisle.

Dated Sept. 25th, 1868.

E. M. HUNTER,
Court Commissioner.

(Indorsed:) Circuit court Milwaukee County. George W. Perrine et al. ag'st Baltimore & Ohio Railroad Company. Order for attachment. Palmer, Hooker & Pitkin, pl'ffs' att'ys. Com'r fees, $2 00; paid by pl'ff's att'ys. Filed Sept. 24, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
against
THE BALTIMORE & OHIO RAILROAD COMPANY.

Whereas the above-named plaintiffs have commenced an action
8 in the circuit court of Milwaukee County, in the State of Wisconsin, against the above-named defendant, to recover damages for injuries alleged to have been sustained by the said Celina Perrine, one of the said plaintiffs, by or through an alleged wrongful act of said defendant; and whereas, under and by virtue of the laws of the State of Wisconsin in such case made and provided, the said plaintiffs have attached, or caused to be attached, divers railway cars, to wit, fifteen cars, numbered as follows, to wit: 9013, 9018, 9026, 9033, 9063, 9070, 9090, 9100, 9125, 9126, 9135, 9145, 9148, 9155, and 9117, the property of the said Baltimore and Ohio Railroad Company, and which said cars are now in the hands of the sheriff of Milwaukee County, and held by said sheriff under said writ of attachment; and whereas the said defendant has entered its appearance in the above-entitled cause, and is desirous of regaining the immediate possession of the said cars and all of them; and whereas before the said sheriff will release his said levy and deliver to the defendant the said cars, he requires and demands security, as required by law:

Now, therefore, I, Alexander Mitchell, a resident and freeholder in the county of Milwaukee, State of Wisconsin, do hereby become bound and do undertake and promise that I will, on demand, pay to the said plaintiffs the amount of the judgment, and costs, and disbursements which may be finally recovered in this action not exceeding the sum of forty thousand dollars.

In witness whereof I hereto set my hand and seal this sixth day of October, 1868.

ALEX. MITCHELL. [SEAL.]

It is hereby stipulated that this undertaking shall be accepted in the case, & with the same effect as though executed with two sureties, & the surety had justified.

PALMER, HOOKER & PITKIN,
Pl'ffs' Att'ys.
FINCHES, LYNDE & MILLER,
Att'ys for Def't.

9 (Indorsed:) Circuit court, Milwaukee County. George W. Per-

rine et al. vs. The Baltimore & Ohio Railroad Company. Undertaking to release property. Filed Oct'r 9, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERINE, HIS wife,
against
THE BALTIMORE & OHIO RAILROAD COMPANY.

We, the undersigned disinterested freeholders of the county of Milwaukee, having been summoned by the sheriff of Milwaukee County to appraise certain personal property which has been seized by said sheriff by virtue of a writ of attachment in his hands in the above-entitled action, and having first been sworn by said sheriff to make a true appraisement thereof, do hereby certify that we have appraised the same as follows, to wit, fifteen freight cars, numbered as follows: 9013, 9018, 9026, 9033, 9063, 9070, 9090, 9100, 9125, 9126, 9135, 9145, 9148, 9155, & 9177, at $15,000 00.

DANIEL GLEASON,
JOHN MASON,
Appraisers.

Sworn to & subscribed before me this 29th day of September, A. D. 1868.

W'M G. PARSONS,
Under Sheriff, Milwaukee County, Wis.

Filed October 9, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, HIS wife,
against
BALTIMORE & OHIO RAILROAD COMPANY.

10 STATE OF WISCONSIN, *Milwaukee County, ss:*

CELINA PERRINE, being duly sworn, says that she is one of the plaintiffs in the above-entitled action, & that the above-named plaintiff, George W. Perrine, is her husband; that said plaintiffs reside in the city of Milwaukee, & State of Wisconsin; that the above-named defendant The Baltimore & Ohio Railroad Company is a foreign corporation duly incorporated and existing under and by virtue of the laws of the State of Maryland, and has property in the county of Milwaukee within the State of Wisconsin, to wit, seven freight cars; that a cause of action exists in favor of the above-named plaintiff against the said defendant; that said cause of action arises out of a wrongful act, sounding in tort, committed by said defendant & its agents; that, on or about the 25th day of January, A. D. 1868, the said defendant received this deponent into one of the passenger cars used by said defendant for the purpose of conveying her therein upon the said railroad, controlled & operated by said defendant, as a passenger from Bell Air, Ohio, to Columbus, Ohio, for a valuable consideration paid by the above-named plaintiff, George W. Perrine, to said defendant; that the car used by

said defendant to convey this deponent, and the track of the road used and operated by said defendant in the neighborhood of Spencer's station, in Guernsey County, Ohio, between Bell Air & Columbus aforesaid, were both at the aforesaid time defective and unsound, & unfit to be used for the transportation of passengers, which the said defendant might and would then and theretofore have known by due care; but not regarding its duty, the said defendant negligently used them and suffered them to be used, and while said car was proceeding with this deponent therein, at or near said Spencer's station, said car was, by reason of the defectiveness and unsoundness of said car and of said track, and of the negligence of said defendant & its agents, thrown from the track, and this deponent was thereby seriously injured, her thigh bone was fractured, and this deponent sustained other severe injuries and bruises, by reason of which she will be a cripple
11 for life; and the plaintiffs thereby sustained damages in the sum of twenty thousand dollars, which the said defendant has not paid, nor any portion of the same; that the summons in this action has been placed in the hands of the sheriff of Milwaukee County for service, and that said sheriff has returned said summons with an endorsement that he has been unable to find said defendant within the said county of Milwaukee; that the said defendant cannot, after due diligence, be found within this State, & that this court has jurisdiction of the subject-matter of this action.

Deponent further says, upon information and belief, that D. W. Carlisle, who resides at the city of Milwaukee, in the State of Wisconsin, is an agent of the above-named defendant, & that said Carlisle is now within the State of Wisconsin.

CELINA PERRINE.

Subscribed & sworn to this 25th day of Sept., A. D., 1868, before me.
C. A. LOVELAND,
Notarg Public, Mil. Co., Wis.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, James Hickox, clerk of said court, do hereby certify that I have compared the foregoing copy with the original affidavit for attachment entered in the action therein entitled; that it is a correct transcript therefrom, and of the whole thereof, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, this 25 day of September, A. D. 1868.

[SEAL.] JAMES HICKOX, *Clerk.*

(Indorsed:) Circuit court Milwaukee County. George W. Perrine et als. vs. Baltimore & Ohio Railroad Company. Aff't for attachment. Certified copy. Palmer, Hooker & Pitkin, pl'ffs' att'ys. Filed October 9, 1868. Hickox, clerk.

12 Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, HIS wife, pl'ff,
against
BALTIMORE & OHIO RAILROAD COMPANY, DEF'T.

It appearing from the affidavit of Celina Perrine, one of the above-

named plaintiffs, that a cause of action exists in favor of the above-named plaintiffs, & against the above-named defendant; that said defendant is a foreign corporation, & has property in the county of Milwaukee, within the State of Wisconsin; that the cause of action arises out of the wrongful act, sounding in tort, committed by said defendant & its agents. & that this court has jurisdiction of the subject-matter of this action, & that said defendant cannot, after due diligence, be found within this State; & it appearing to my satisfaction that a cause of action exists in favor of said plaintiffs, & against said defendant, sounding in tort, for the sum of twenty thousand dollars, within the provisions of chapter 29 of the general laws of the State of Wisconsin for the year 1868, & it appearing that D. W. Carlisle, of the city of Milwaukee, & tSate of Wisconsin, an agent of said defendant, & that he is now within the State of Wisconsin:

It is ordered that the plaintiffs in this action proceed by attachment against the property of the above-named defendant within the State of Wisconsin, in the circuit court of Milwaukee County, & the amount of property in value to be attached is hereby fixed at twenty thousand dollars; & it is also ordered that a copy of the summons & complaint, & the said affidavit of said Celina Perrine, & this order of attachment, together with the attachment & inventory of property attached, be served upon said D. W. Carlisle.

Dated Sept. 25th, 1868.

E. M. HUNTER,
Court Commissioner.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

I, James Hickox, clerk of said court, do hereby certify that I
13 have compared the foregoing copy with the original order granting writ of attachment entered in the action therein entitled; that it is a correct transcript therefrom, and of the whole thereof, as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 25 day of September, A. D. 1868.

[SEAL.] JAMES HICKOX, *Clerk.*

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine et als. ag'st Baltimore & Ohio Railroad Company. Order for attachment. Palmer, Hooker & Pitkin, pl'ffs' att'ys. Filed October 9, 1868. Hickox, clerk.

Undertaking on attachment.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
against
BALTIMORE & OHIO RAILROAD COMPANY.

The above-named plaintiffs having applied for a warrant of attachment against the property of the above-named defendant, The Baltimore & Ohio Railroad Company, we, Levi H. Kellogg, of the city & county of Milwaukee, & State of Wisconsin, and E. H. Goodrich, of said city of Milwaukee, do undertake, pursuant to the statute in such case made

and provided, in the sum of two hundred and fifty dollars, that if the said defendant recover judgment in this action, the above-named plaintiffs will pay all costs that may be awarded to the above-named defendant, and all damages which the said defendant may sustain by reason of the said attachment, not exceeding the sum above-mentioned.

Dated Milwaukee, Sept. 25, 1868.

LEVI H. KELLOGG.
EDWIN H. GOODRICH.

STATE OF WISCONSIN,
County of Milwaukee, ss:

Levi H. Kellogg, being duly sworn, say' that he is one of the
14 subscribers to the foregoing undertaking; that he is a resident, and freeholder within this State, and is worth the sum of five hundred dollars, over all his debts and liabilities, and property by law exempt from execution.

LEVI H. KELLOGG.

Sworn before me this 25th day of September, 1868.

JNO. L. HATHAWAY,
Notary Public, Mil. Co., Wis.

STATE OF WISCONSIN,
County of Milwaukee, ss:

E. H. Goodrich, being duly sworn, says that he is one of the subscribers to the foregoing undertaking; that he is a resident, and freeholder within this State, and is worth the sum of five hundred dollars, over all his debts and liabilities, and property by law exempt from execution.

EDWIN H. GOODRICH.

Sworn before me this 25 day of September, 1868.

A. W. B. TAEFUSS,
Notary Public, Milw. Co., Wis.

Filed October 9, 1868. Hickox, clerk.

STATE OF WISCONSIN,
Circuit Court, Milwaukee County, ss:

[SEAL.] The State of Wisconsin to the sheriff of the county of Milwaukee, greeting:

Whereas, an application has been made for, and an order granted allowing, a writ of attachment against the property of Baltimore & Ohio Railroad Company, defendant, in an action commenced in this court, wherein George W. Perrine and Celina Perrine, his wife, are plaintiffs; and annexed hereto is a certified copy of an affidavit, and the undertaking on the granting of this writ, pursuant to the provisions of chapter 29 of the session of 1868, entitled "An act to provide for the service of summons by publication in certain cases, and for attachment therein;" and it appears from said affidavit that the whole amount due the said plaintiff is the sum of twenty thousand dollars:"

Now you are hereby commanded to attach and safely keep all the property of the said defendant in your county, or so much thereof
15 as may be sufficient to satisfy the plaintiffs' debt, not exceeding twenty thousand dollars, together with the costs and expenses, as a security for the satisfaction of such judgment as the said plaintiff may recover in said action.

Witness the Honorable Arthur MacArthur, judge of the second judicial circuit, at Milwaukee, this 25 day of September, A. D. 1868.

JAMES HICKOX, *Clerk.*

PALMER, HOOKER & PITKIN,
Plaintiffs' Att'y.

MILWAUKEE COUNTY, *ss:*

I certify that, by virtue of the within writ of attachment, I did, on the 25th day of October, 1868, seize & attach, as the property of the within-named defendant, certain personal property, more particularly described in the inventory hereinafter mentioned, and I made an inventory of said property & caused the same to be appraised by Daniel Gleeson & John Mason, two disinterested freeholders of said county, who were first duly sworn by me to make a true appraisement thereof; which said inventory and appraisement is herewith returned. I further certify that, in pursuance of the order of E. M. Hunter, court commissioner, hereto annexed, I served upon D. W. Carlisle a copy of the affidavit of the within-named plaintiff, Celina Perrine, & of the order of attachment, together with a copy of the within writ of attachment, & of the inventory of said property; and I detained the property so attached in my custody until the 6th day of October, 1868, when, upon the execution and delivery to me of an undertaking by the defendant pursuant to law, & and by stipulation between the parties thereon endorsed, I released said property from my custody, & delivered the same to the defendant; and I return the said undertaking hereto annexed.

Dated Milwaukee, October 7, 1868.

JOS. DEUSTER,
Sheriff Mil. Co. Wis.

Fees, $35 75.

(Indorsed;) Circuit court, Milwaukee County. George W. Perrine et al., plaintiff, against Baltimore & Ohio Railroad Company, defendants. Writ of attachment. Palmer, Hooker, & Pitkin, pl'ff's att'ys. Filed October 9, 1868. Hickox, clerk.

16 STATE OF WISCONSIN,
Circuit Court, Milwaukee County:

GEORGE W. PERRINE & CELINA PERRINE, HIS wife, plaintiffs,
against
BALTIMORE AND OHIO RAILROAD COMPANY, defendant.

Please to take notice that we are retained for the defendant in the above-entitled action, and demand that you serve upon us, at our office in Excelsior Building, Milwaukee, Wisconsin, a copy of the complaint therein; and that we have this day entered the appearance of the defendant in said above-entitled cause.

October 2d, 1868.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Attorneys for Defendant.

To Messrs. PALMER, HOOKER & PITKIN, Esqs.,
Attorneys for Plaintiffs.

Filed October 6, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, HIS wife, plaintiffs,
against
BALTIMORE AND OHIO RAILROAD COMPANY, defendant.

To the circuit court of Milwaukee County:

The petition of the above-named Baltimore and Ohio Railroad Company shows unto this honorable court that the above-named George W. Perrine and Celina Perrine, his wife, have commenced a suit against your petitioner, The Baltimore and Ohio Railroad Company, in the circuit court in and for Milwaukee County, State of Wisconsin, and which said suit is now pending in the said court.

And your petitioner further shows and alleges that the said George W. Perrine and Celina Perrine, his wife, were, at the date of the commencement of the said suit, and now are, citizens and residents of the State of Wisconsin.

And your petitioner alleges that it, the said Baltimore and Ohio Railroad Company, was, at the date of the commencement of said suits, and now is, a corporation, duly incorporated and existing under and by virtue of the laws of the State of Maryland, and a citizen of the State of Maryland, and having its residence in said State.

And your petitioner alleges that the matters in dispute in the said suit in said circuit court of Milwaukee County, in which the said George W. Perrine and Celina Perrine, his wife, are plaintiffs, and your petitioner, The Baltimore and Ohio Railroad Company, is defendant, exceeds the sum of five hundred dollars exclusive of costs.

And your petitioner further shows that it is ready and willing, and hereby offers good and sufficient security for its entering in the circuit court of the United States in and for the district of Wisconsin, on the first day of its session, copies of said process against it, and also for its there appearing and entering special bail in the cause, if special bail was originally requisite therein.

Your petitioner, The Baltimore and Ohio Railroad Company, therefore prays that the said cause now pending in the said circuit court in and for Milwaukee County, in the State of Wisconsin, wherein the said George W. Perrine and Celina Perrine, his wife, are plaintiffs, and your petitioner is defendant, may be removed into the circuit court of the United States in and for the district of Wisconsin; that the security offered may be accepted, and that all proceedings in the said cause in the circuit court of Milwaukee County may be stayed; or for such other further or different relief as the court may grant in the premises, and your petitioner will ever pray, &c.

Baltimore & Ohio Railroad Company.

By FINCHES, LYNDE & MILLER,
Its Attorneys.

STATE OF WISCONSIN,
Milwaukee County, ss:

H. M. Finch, being duly sworn, deposes and says that he is one of the firm of Finches, Lynde & Miller, the attorneys of the defendant in the above-entitled cause, and that he has read the foregoing petition

and knows the contents thereof, and that the same is true in substance and in fact.

18 H. M. FINCH.

Subscribed and sworn to before me this 2d day of October, 1868.
FRANCIS BLOODGOOD,
Court Commissioner Mil. Co., Wis.

Filed October 6, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife, plaintiffs,
against
BALTIMORE & OHIO RAILROAD COMPANY, defendant.

To the clerk of the circuit court in and for Milwaukee County, State of Wisconsin:

Please enter the appearance in the above-entitled cause of the above-named defendant, The Baltimore and Ohio Railroad Company.

Yours respectfully,
FINCHES, LYNDE & MILLER,
Atty's for Defendant—Baltimore & Ohio Railroad Company.

Dated October 2d, 1868.

Filed October 6, 1868. Hickox, clerk.

Know all men by these presents that I, Alexander Mitchell, of the city of Milwaukee, State of Wisconsin, am held and firmly bound unto George W. Perrine and Celina Perrine, his wife, in the sum of one thousand dollars, lawful money of the United States, to be paid to the said George W. Perrine and Celina Perrine, his wife, or to their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, and each of them firmly, by these presents, sealed with my seal, and dated the second day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

Whereas the above-named George W. Perrine and Celina Perrine, his wife, have commenced a suit in the circuit court of Milwaukee County, against The Baltimore and Ohio Railroad Company; whereas the

19 said Baltimore and Ohio Railroad Company is about to file its petition to the circuit court of Milwaukee County, praying for the removal of said cause to the circuit court of the United States for the district of Wisconsin, in pursuance of the act of Congress in such case made and provided:

Now, therefore, the condition of this obligation is such, that if the said Baltimore and Ohio Railroad Company shall enter in the said circuit court of the United States for the district of Wisconsin, on the first day of its session, copies of said process against it, and also that it will then appear and put in special bail, if special bail was originally requisite therein, then this obligation shall be void; else valid.

ALEX. MITCHELL. [SEAL.]

Signed, sealed, & delivered in presence of—
W'M P. LYNDE.

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine et als. vs. Baltimore and Ohio Railroad Company. Notice of retainer. Entry of appearance for defendant. Petition to remove cause into U. S. circuit court. Bond on removal.

Service of copy admitted this 6th day of October, 1868.

PALMER, HOOKER & PITKIN,
Pl'ffs' Att'ys.

Filed Oct. 6, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
against
BALTIMORE & OHIO RAILROAD COMPANY.

Upon the summons, complaint, affidavit of Celina Perrine, and the writ of attachment in this cause, copies of which were served by the plaintiffs upon the defendant, and upon the notice of retainer, entry of appearance of the defendant, petition for the removal of the cause into the circuit court of the United States, and the bond executed by
20 Alexander Mitchell, copies of which are herewith served, and upon the papers now on file in this cause, let the said plaintiffs show cause before the circuit court of Milwaukee County, at the present term thereof, at the court-house in the city of Milwaukee, State of Wisconsin, on Saturday, the tenth day of October, 1868, at the opening of the court, or as soon thereafter as counsel can be heard, why the prayer of the said petition to remove the above-entitled cause into the circuit court of the United States in and for the district of Wisconsin, should not be granted, or for such other or further relief as the court may grant in the premises; and in the meantime, and until further ordered, let all proceedings on the part of the plaintiff in this cause be, and they hereby are, stayed.

Dated October 6th, 1868.

FRANCIS BLOODGOOD,
Court Commissioner, Milwaukee County.

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine et als. vs. Baltimore & Ohio Railroad Company. Order to show cause.

Due service of a copy of within admitted this 6th day of October, 1868.

PALMER, HOOKER & PITKIN,
Pl'ffs' Att'ys.

Filed Oct. 6, 1868. Hickox, clerk.

Circuit court, Milwaukee County.

GEORGE W. PERRINE AND CELINA PERRINE, his wife, plaintiffs,
against
BALTIMORE AND OHIO RAILROAD COMPANY, defendant.

A petition having been filed by the defendant in this cause at the

time of entering its appearance therein, praying for the removal thereof to the circuit court of the United States in and for the district of Wisconsin, and offering good and sufficient surety for its entering in such court on the first day of its session copies of the process herein against them, and also for its then appearing and entering special bail in
21 the cause, if special bail was originally requisite therein, and an order to show cause why the prayer of such petition should not be granted, having been made on the sixth day of October, 1868, and said order having been duly served on the attorneys of the said plaintiffs:

Now, upon motion of Finches, Lynde & Miller, of counsel for the defendant, it is declared that it is made to appear to the satisfaction of this court that the present suit is commenced by citizens of the State of Wisconsin against a citizen of the State of Maryland, and that the matter in dispute exceeds the sum or value of five hundred dollars, exclusive of costs.

And it is further declared and ordered that this court doth accept the surety offered, and that all proceedings in the said cause in this court be, and they are hereby, stayed; and the said cause is hereby removed into the circuit court of the United States in and for the district of Wisconsin, as prayed for in and by the petition of the said defendant.

By the court.

October 10th, 1868.

ARTHUR MACARTHUR.

(Indorsed:) Circuit court, Milwaukee County. George W. Perrine & Celina Perrine, his wife, against Baltimore & Ohio Railroad Company. Order removing cause into the U. S. court.

Service of copy admitted.
October 10th, 1868.

PALMER, HOOKER & PITKIN,
Pl'ffs' Att'ys.

Filed October 10, 1868. Hickox, clerk.

STATE OF WISCONSIN,
Circuit Court of Milwaukee County, ss:

I, James Hickox, clerk of said court, do hereby certify that I have compared the foregoing copies with the originals on file in this action; that they are severally correct transcripts therefrom, and of each and every thereof, together with the endorsements thereon, respectively, and of the whole thereof, as the same are of record in my office.

I further certify that said copies are copies of all the papers on file in this office in the action therein entitled.

In testimony whereof I have hereto set my hand and the
22 seal of said court, at Milwaukee, in said county, this 16th day of October, A. D. 1868.

[SEAL.]

JAMES HICKOX, *Clerk.*
By W. L. CLEAVER, *Deputy.*

(Indorsed:) 354. Law docket B. Circuit court, Milwaukee County. George W. Perrine et al. vs. Baltimore & Ohio Railroad Company. Copies. Filed November 10, 1868. Edward Kurtz, clerk.

23 *Docket entries.*

Docket entries in U. S. circuit court.

FEBRUARY 1, 1869.—This day came the plaintiffs, by their attorneys, and filed their declaration; and same day, "On motion of Palmer, Hooker & Pitkin, plaintiffs' attorneys, ordered that the defendant plead to the plaintiffs' declaration, on file, by the first Monday of March next, or its default will be entered."

MARCH 1, 1869.—This day came the defendant, by its attorneys, Messrs. Finches, Lynde & Miller, and filed its plea and demurrer.

APRIL 3, 1869.—This day came the plaintiffs, by their attorneys, and entered in the order and rule-book a rule for a commission to issue to Nathaniel J. Manning, esq., of Barnesville, Belmont Co., Ohio, to take the depositions of Dr. James W. Warfield & Charles Swan, of Barnesville, Ohio, and Charles W. Moseley, Sarah E. Moseley, Martha M. Moseley, Henry H. Moseley, Asa Spencer, Nathan Spencer, & John R. Hunt, of Spencer's Station, Guer'sey County, Ohio, and filed interrogatories to be annexed to said commission.

And, same day, entered a rule for a commission to issue to William E. Fink, esq., of Somerset, Perry Co., Ohio, to take the depositions of Daniel R. Needy, Sarah Needy, & Samuel Ream, of same place, and filed interrogatories to be annexed.

And, same day, entered a rule for a commission to issue to August P. Blocksom, esq'r., of Zanesville, Ohio, to take the depositions of Dr. R. T. Dean & Sarah Dean, his wife, of Roseville, Muskingum Co., Ohio, and Joseph Everage, of Zanesville, Ohio, and filed interrogatories to be annexed to said commission.

And, same day, entered a rule for a commission to issue to Thomas Sparrow, esq., of Columbus, Ohio, to take the deposition of H. J. Jewett, of same place, and filed interrogatories to be annexed to said commission.

APRIL 17, 1869.—This day came the defendant, by its attorneys, and filed objections to interrogatories and also filed cross interrogatories to be annexed to commission to be issued to William E. Fink, and named C. C. Goddard, esq'r, of Zanesville, Ohio, as commissioner on the part of the defendant.

APRIL 20, 1869.—This day came the defendant, by its attorneys, and filed objections to interrogatories to be propounded to Dr. James W. Warfield & others, under commission to issue to Nathaniel J. Manning, esq'r., of Barnesville, Ohio, and also filed cross-interrogatories to be annexed, and named J. H. Collins, esq'r., as commissioner on its part.

APRIL 22, 1869.—This day came the defendant, by its attorneys, and filed objections to interrogatories to be propounded to R. T. Dean & others, under commission to issue to August P. Blocksom, esq'r., of Zanesville, Ohio, and also filed cross-interrogatories to be annexed, and named C. C. Goddard, esq'r., as commissioner on part of defendant.

And, same day, filed objections to interrogatory 6th to be propounded to H. J. Jewett.

APRIL 24, 1869.—Commissions issued to Nathaniel J. Manning & J.

H. Collins, esq'r's, of Barnesville, Ohio, to take the depositions of Dr. James W. Warfield and others; and to William E. Fink, esq'r., of Somerset, Ohio, & C. C. Goddard, esq'r., of Zanesville, Ohio, to take the depositions of Daniel R. Needy and others; and to August P. Blocksom & C. C. Goddard, esq'r's, of Zanesville, Ohio, to take the depositions of Dr. R. T. Dean and others; and to Thomas Sparrow, esq'r., of Columbus, Ohio, to take the deposition of H. J. Jewett, of same place.

JUNE 18, 1869.—Depositions received from post office and filed.

JUNE 22, 1869.—Depositions received from post office and filed.

JULY 7, 1869.—This day came the parties, by their counsel, and on motion of defendant, it is ordered by the court that the depositions on file be opened and published.

AUGUST 14, 1869.—Depositions received from post office and filed.

AUGUST 20, 1869.—This day came the plaintiffs, by their attorneys, & filed their joinder in demurrer.

25 SEPTEMBER 28, 1869.—This day came the parties, by their counsel, and the demurrer to the fourth count of the declaration came on to be heard, and was argued by said counsel; on consideration whereof, it is ordered by the court that the said demurrer be, and hereby is, sustained; and it is further ordered by the court that the plaintiffs have leave to amend the declaration by adding new counts.

SEPTEMBER 30, 1869.—Depositions received from H. M. Finch, esq., and filed.

OCTOBER 27, 1869.—This day came the plaintiffs, by their attorneys, and filed their amended declaration, as follows:

Amended declaration.

United States circuit court for the district of Wisconsin, of the first Monday of January, A. D. 1869.

DISTRICT OF WISCONSIN, *ss:*

George W. Perrine and Celina Perrine, who are citizens of the State of Wisconsin, and plaintiffs in this case, by Palmer, Hooker & Pitkin, their attorneys, complain of The Baltimore and Ohio Railroad Company, a corporation duly created and existing under and by virtue of the laws of the State of Maryland, and located in said last-mentioned State, and a citizen of the said State of Maryland, defendant, of a plea of trespass upon the case.

For that whereas the said defendant, The Baltimore and Ohio Railroad Company, before and at the time of committing the grievances hereinafter mentioned, was a corporation duly created, organized, and existing under and by virtue of the laws of the State of Maryland, to wit, at the city of Milwaukee, in the district aforesaid, and was then and there a common carrier, possessing, using, and operating a certain railroad running from Bellair, in the State of Ohio, to the city of Columbus, in said State of Ohio, together with the track, cars, locomo-

tives, and other apparatus thereto belonging, and then & there a common carrier of passengers for hire & reward to the said defendant in that behalf thereupon, between said places of Bellaire aforesaid and the city of Columbus aforesaid, to wit, at the said city of Mil-
26 waukee, in the district aforesaid; and the said defendant being so possessed of, & so using & operating the said railroad, together with the track, cars, locomotives, and other apparatus thereto belonging, as aforesaid; thereupon, heretofore, to wit, on the 25th day of January, A. D. 1868, at said Bellaire, in said State of Ohio, to wit, at the said city of Milwaukee, in the district aforesaid, the said plaintiff, Celina Perrine, who then & there was, & still is, the wife of the said plaintiff, George W. Perrine, at the special instance & request of the said defendant, became and was a passenger in one of the passenger cars so used and operated by said defendant, as aforesaid, to be safely and securely carried and conveyed thereby on a certain journey on the road so operated by said defendant, to wit, from Bellaire aforesaid to the city of Columbus aforesaid, for a certain fare or reward then and there paid to the said defendant in that behalf, and that the said defendant then and there received the said plaintiff Celina Perrine as such passenger as aforesaid; & thereupon it then & there became and was the duty of the said defendant to use due and proper care that the said plaintiff Celina Perrine should be safely & securely carried & conveyed by and in said passenger car, on the said journey, from Bellaire aforesaid to the city of Columbus aforesaid; yet the said defendant not regarding its duty in that behalf, did not use due and proper care that the said plaintiff Celina Perrine should be safely and securely carried and conveyed by and in said passenger car, on her said journey from Belle Air aforesaid to the city of Columbus aforesaid, but wholly neglected so to do, and then and there suffered and permitted one of the axles of said passenger car to be and remain cracked and broken, and suffered and permitted said passenger car to be then and there used for the conveyance of the said plaintiff Celina Perrine, while said exle was then and there, and for a long time previous thereto had been, so cracked and broken as aforesaid, and then and there suffered and permitted the track of said railroad near Spencer's station, in Guernsey County, in the State of Ohio, and between Belle Air aforesaid and the
27 city of Columbus aforesaid, to be and remain in a defective, unsound, and unsafe condition, and to be used for the conveyance of the said plaintiff Celina Perrine, in said passenger car, over said track while it was in such defective and unsound condition as aforesaid, to wit, at the place aforesaid; and that by reason of the defectiveness & unsoundness of said passenger car and track as aforesaid, afterwards, to wit, at the day and place aforesaid, and while said passenger car was proceeding with the said plaintiff Celina Perrine therein, over said track, on said journey from Belle Air aforesaid, to the city of Columbus aforesaid, and before the arrival thereof at the city of Columbus aforesaid, to wit, on the day and year aforesaid, in the county of Guernsey, in the State of Ohjo, near Spencer's station aforesaid, to wit, at the city of Milwaukee, in the district aforesaid, the said passenger car was thrown from the track, and was overturned, by means whereof one of the thigh bones of the said plaintiff Celina Perrine became and was fractured, and the said plaintiff Celina Perrine was thereby crippled for life; and the said plaintiff Celina Perrine was greatly bruised, wounded, & injured, & also by means of the premises, the said plaintiff Celina Perrine became & was sick, sore, lame, and

disordered, & so remained and continued for a long space of time, to wit, from thence hitherto, during all which said time the said plaintiff Celina Perrine suffered and underwent great pain, and was hindered and prevented from transacting and attending to her necessary & lawful affairs, by her, during all that time, to be performed and transacted, and thereby, also, the said plaintiffs were forced and obliged to, and did, then and there, pay, lay out, and expend, divers large sums of money, amounting, in the whole, to the sum of one thousand dollars, in and about the endeavoring to accomplish the cure of the said plaintiff Celina Perrine of the said fractures, bruises, & injuries received as aforesaid; which said fractures, bruises, and injuries were received without any default or negligence on the part of the said plaintiff Celina Perrine, to wit, at the district aforesaid.

28 2nd. And whereas also, heretofore, to wit, on the day and year, and at the place aforesaid, the said defendant, The Baltimore & Ohio Railroad Company was a corporation duly created, organized and existing under and by virtue of the laws of the State of Maryland, to wit, at the city of Milwaukee, in the district aforesaid, and was then & there a common carrier, possessing, using, and operating a certain other railroad, to wit, a railroad running from Belle Air, in the State of Ohio, to the city of Columbus, in said State of Ohio, together with the track, cars, locomotives, and other apparatus thereto belonging, & was then and there a common carrier of passengers for hire & reward to the said defendant in that behalf, thereupon and between said places of Belle Air aforesaid, and the city of Columbus aforesaid, to wit, at the city of Milwaukee, in the district aforesaid; and said defendant being so possessed of & using & employing & operating the said last-mentioned railroad, together with the track, cars, locomotives, and other apparatus thereto belonging, as aforesaid, thereupon, heretofore, to wit, on the said 25th day of January, A. D. 1868, at said Belle Air, in said State of Ohio, to wit, at said city of Milwaukee, in the district aforesaid, the said Celina Perrine, who then and there was, and still is, the wife of the said plaintiff George W. Perrine, at the special instance and request of the said defendant, became and was a passenger on one of the passenger cars so operated by the said defendant, as last aforesaid, to be safely and securely carried and conveyed thereby on a certain journey over the said last-mentioned railroad so operated by said defendant, to wit, from Belle Air aforesaid to the city of Columbus aforesaid, for a certain fare and reward then and there paid to the said defendant in that behalf, and that the said defendant then & there received the said plaintiff Celina Perrine as such passenger as aforesaid, & thereupon, it then and there became & was the duty of the said defendant to use due and proper care that the said plaintiff Celina Perrine should be safely and securely carried and conveyed

29 by & in the said last-mentioned passenger car, on the said journey from Belle Air aforesaid to the city of Columbus aforesaid yet the said defendant, not regarding its duty in that behalf, did not use due and proper care that the said plaintiff Celina Perrine should be safely & securely carried and conveyed, by and in said last-mentioned passenger car, on her said journey from Belle Air aforesaid to the city of Columbus aforesaid, but wholly neglected so to do, & then & there suffered & permitted one of the axles of said last-mentioned passenger car to be & remain cracked, broken, & in an unsound, defective, and unsafe condition, & permitted said last-mentioned passenger car to be then and there used, & did then & there use the same for the conveyance of the said plaintiff Celina Perrine from Belle Air aforesaid to the city of Columbus afore-

said, while said axle of said last-mentioned passenger car was so cracked and broken and in the unsound, defective, & unsafe condition as aforesaid, to wit, on the day and year aforesaid, to wit, at the place aforesaid; that, by reason of the crack, break, unsoundness, & defect of said axle of said last-mentioned passenger car, as aforesaid afterward, to wit, at the day and place aforesaid and while said last-mentioned passenger car was proceeding, with the said plaintiff Celina Perrine therein, on the said journey from Belle Air aforesaid to the city of Columbus aforesaid, and before the arrival thereof at the city of Columbus aforesaid, on the day and year aforesaid, in the county of Guernsey, in the said State of Ohio, near Spencer's station, to wit, at the city of Milwaukee, in the district aforesaid, the said last-mentioned passenger car was thrown from the track and was overturned, and by means whereof one of the thigh bones of the said plaintiff Celina Perrine became and was fractured and the said plaintiff Celina Perrine was thereby crippled for life and was otherwise greatly bruised, wounded, & injured; and also by means of the premises the said plaintiff Celina Perrine became and was sick, sore, lame, & disordered, and so remained
30 and continued for a long space of time, to wit, from thence hitherto, during all which said time the said plaintiff Celina Perrine suffered & underwent great pain & was hindered & prevented from transacting & attending to her necessary and lawful affairs, by her during all that time to be performed and transacted, and thereby also the said plaintiffs were forced, and obliged to, and did, then and there pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars, in and about the endeavoring to accomplish the cure of the said plaintiff Celina Perrine of the said fractures, bruises, and injuries, so received as aforesaid, which said fractures, bruises, & injuries were received without any default or negligence on the part of the said plaintiff Celina Perrine, to wit, at the district of Wisconsin aforesaid.

3rd. And whereas also, heretofore, to wit, on the day and year aforesaid, the said defendant, The Baltimore and Ohio Railroad Company, was a corporation duly created, organized, and existing under and by virtue of the laws of the State of Maryland, to wit, at the city of Milwaukee, in the district aforesaid, and was then and there a common carrier, possessing, using, and operating a certain other railroad, running from Belle Air, in the State of Ohio, to the city of Columbus, in said State of Ohio, together with the track, cars, locomotives, and other apparatus thereto belonging; and was then and there a common carrier of passengers, for hire and reward to the said defendant in that behalf thereupon, and between said places of Belle Air aforesaid & the city of Columbus aforesaid, to wit, at the city of Milwaukee, in the district aforesaid, and said defendant being so possessed of and using, employing, and operating the said last-mentioned railroad, together with the track, cars, locomotives, & other apparatus, thereto belonging as aforesaid, thereupon, heretofore, to wit, on the said 25th day of January, A. D. 1868, at said Belle Air, in said State of Ohio, to wit, at said city of Milwaukee, in the district aforesaid, the said Celina Perrine, who then and there was & still is the wife of the said plaintiff George W. Perrine, at the special in-
31 stance and request of the said defendant, became and was a passenger in one of the passenger cars so used and operated by the said defendant as last aforesaid, to be safely and securely carried and conveyed thereby on a certain journey on the said last-mentioned railroad, so operated by said defendant, to wit, from Belle Air aforesaid

to the city of Columbus aforesaid, for a certain hire & reward, then and there paid to the said defendant in that behalf, and that said defendant then and there received the said plaintiff Celina Perrine, as such passenger as aforesaid, and thereupon it then and there became and was the duty of the said defendant to use due and proper care that the said plaintiff Celina Perrine should be safely and securely carried and conveyed by and in the said last-mentioned passenger car, on the said journey from Belle Air aforesaid to the said city of Columbus aforesaid; yet the said defendant, not regarding its duty in that behalf, did not use due and proper care that the said plaintiff Celina Perrine should be safely and securely carried and conveyed by and in said last-mentioned passenger car, on her said journey from Belle Air aforesaid to the city of Columbus aforesaid, but wholly neglected so to do, and then and there, and for a long time prior thereto, suffered and permitted the track of said last-mentioned railroad, near Spencer's station, in Guernsey County, in the State of Ohio, between Belle Air aforesaid and the city of Columbus aforesaid, to be and remain in a defective, unsafe, and unsound condition, and to be used for the conveyance of the said plaintiff Celina Perrine in said last-mentioned passenger car, over said last-mentioned track, while said track was in such defective, unsafe, and unsound condition as aforesaid, to wit, at the place aforesaid; that, by reason of the defectiveness, unsoundness, and unsafe condition of said last-mentioned track as aforesaid, afterwards, to wit, at the day and place aforesaid, and while said last-mentioned passenger car was proceeding with the said plaintiff Celina Perrine therein, over the said last-mentioned track, on the said journey from Belle Air afore-
32 said to the city of Columbus aforesaid, and before the arrival thereof at the city of Columbus aforesaid, to wit, on the day and year aforesaid, near Spencer's station aforesaid, in the said county of Guernsey, in said State of Ohio, to wit, at the city of Milwaukee, in the district aforesaid, the said last-mentioned passenger car was thrown from the track and was overturned, and by means whereof one of the thigh bones of the said plaintiff Celina Perrine became and was fractured, and the said plaintiff Celina Perrine was otherwise greatly bruised, wounded, and injured, & permanently crippled & deprived of the use of one of her limbs, and also by means of the premises the said plaintiff Celina Perrine became and was sick, sore, lame, & disordered, and so remained and continued for a long space of time, to wit, from thence hitherto; during all which said time the said plaintiff Celina Perrine suffered and underwent great pain, and was hindered and prevented from transacting and attending to her necessary & lawful affairs, by her during all that time to be performed & transacted. And thereby, also, the said plaintiffs were forced and obliged to, and did then and there pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars, in and about the endeavoring to accomplish the cure of the said plaintiff Celina Perrine of the said fractures, bruises, & injuries so received as aforesaid, which said fractures, bruises, & injuries were received without any default or negligence on the part of the said plaintiff Celina Perrine, to wit, at the district aforesaid.

4. And whereas also, the said defendant, The Baltimore and Ohio Railroad Company, before and at the time of the committing of the grievances hereinafter mentioned, was a corporation duly created and organized, and existing under & by virtue of the laws of the State of Maryland, to wit, at the city of Milwaukee, in said district, and was then and there a common carrier, possessing, using, and operating a

certain other railroad running from Belle Air, in the State of Ohio, to the city of Columbus, in the said State of Ohio, together with the track, cars, locomotives, and other appurtenances thereto be-
33 longing, and was then and there a common carrier of passengers for hire, and reward to the said defendant in that behalf; thereupon, and between said places of Belle Air & the city of Columbus, to wit, at the said city of Milwaukee, in the district aforesaid, and the said defendant being so possessed of, and using and operating the said last-mentioned railroad, together with all the track, cars, locomotives, and other appurtenances thereto belonging. The said plaintiff Celina Perrine, who then and there was, and still is, the wife of the said plaintiff George W. Perrine, heretofore, to wit, on the twenty-fifth day of January, A. D. 1868, at said Belle Air, in the said State of Ohio, to wit, at the city of Milwaukee, in said district, at the special instance and request of the said defendant, became and was a passenger in one of the passenger cars so used and employed, and operated by the said defendant, as last aforesaid, to be safely and securely carried and conveyed therein, on a certain journey, over said last-mentioned railroad, so used and operated by the said defendant, as aforesaid, to wit: from Belle Air aforesaid to the city of Columbus aforesaid, for certain fare, hire, and reward, to the said defendant in that behalf then and there paid. And, although, the said defendant Celina Perrine was then and there received by the said defendant, as such passenger, in and upon and by the said last-mentioned passenger car as aforesaid, yet the said defendant, not regarding its duty in that behalf, so carelessly, negligently, unskilfully, and improperly managed & conducted the said last-mentioned passenger car and the locomotive engine at that time employed by the said defendant in running the said passenger car and train to which the same was then and there attached, and while the said last-mentioned passenger car was proceeding with the said Celina Perrine in and on board thereof, as such passenger as aforesaid, on the said journey from Belle Air aforesaid to the city of Columbus aforesaid, to wit, on the day and year last aforesaid, to wit, near Spencer's station, in the county of Guernsey, in the State of Ohio aforesaid, between Belle Air aforesaid and the city of Columbus aforesaid, to wit, at the city
34 of Milwaukee, in the said district aforesaid, by and through the carelessness, negligence, unskillfulness, and default of the said defendant and its servants, agents, and employees in controlling, managing, & running the said last-mentioned passenger car, and the locomotive engine, then and there employed to move the same, and for want of due care and attention to its and their duty in that behalf, one of the axles of the said last-mentioned passenger car became and was broken, and the wheel attached thereto became and was, by reason of the breaking of such axle, forced and moved from its upright and ordinary position, and from the rail and track of the said road, and that after the said axle had become so broken, and after the said wheel had been so forced and moved from its said upright and ordinary position, and from the said railroad track, the said defendants and their servants and employees in charge, and having the control of the said last-mentioned passenger car and the locomotive engine with which the said passenger car was then and there being moved, negligently, carelessly, and unskillfully allowed, suffered & permitted the said passenger car and the locomotive engine by which the same was then and there moved, to be run and moved without checking the speed thereof for a long distance, to wit, for the distance of one mile, & for a long space of time, to wit, for the space of five minutes, whereby and by reason whereof the said

last-mentioned car was, through the carelessness, negligence, and improper conduct of the said defendant thrown off the track and overturned, with the said plaintiff Celina Perrine therein, as aforesaid, by means whereof one of the thigh bones of the said plaintiff Celina Perrine became and was fractured, and the said plaintiff Celina Perrine was thereby permanently injured and crippled for life, and the said plaintiff Celina Perrine was otherwise greatly bruised, wounded, & injured, & also by means of the premises the said Celina Perrine became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto; during all which said
35 time the said plaintiff Celina Perrine suffered and underwent great pain, and was hindered and prevented from transacting and attending to her necessary and lawful affairs by her, during all that time to be performed and transacted, and thereby also the said plaintiffs were forced and obliged to, and did then and there, pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars in and about the endeavoring to accomplish the cure of said plaintiff Celina Perrine of the fractures, bruises, and injuries so received as aforesaid, and that said fractures, bruises, and injuries were received without any default or negligence on the part or behalf of the said plaintiff Celina Perrine, to wit, at the district aforesaid.

5. And for that, whereas, also the said defendant, The Baltimore and Ohio Railroad Company, before and at the time of the committing of the grievances hereinafter next mentioned, was a corporation, duly created, and organized, and existing, under and by virtue of the laws of the State of Maryland, to wit, at the city of Milwaukee, in said district, and was then and there a common carrier possessing, using, and operating a certain other railroad, running from Beile Air, in the State of Ohio, to the city of Columbus, in the said State of Ohio, together with the track, cars, locomotives, and other appurtenances thereunto belonging, and was then and there a common carrier of passengers, for hire and reward, to the said defendant in that behalf thereupon, and between said places of Belle Air & the city of Columbus; and the said defendant, being so possessed of, and using, and operating the said last-mentioned railroad, together with all the track, cars, locomotives, and other appurtenances thereto belonging, the said plaintiff Celina Perrine, who then and there was, and still is, the wife of the said plaintiff George W. Perrine, heretofore, to wit, on the 25th day of January, A. D. 1868, at said Belle Air, in the said State of Ohio, to wit, at the city of Milwaukee, in said district, at the special instance and request of the said defendant, became and was a passenger in one of the passenger cars so used, and employed, and operated by the said defendant, as last
36 aforesaid, to be safely and securely carried and conveyed therein on a certain journey, over the said last-mentioned railroad so used and operated by the said defendant as aforesaid, to wit, from Belle Air aforesaid to the city of Columbus aforesaid, for certain fare, hire, & reward, to the said defendant in that behalf then and there paid. And thereupon it then and there became, and was the duty of the said defendant to carry and convey the said Celina Perrine in the said last-mentioned passenger car, on the said journey over the said last-mentioned railroad, so used and operated by the said defendant as last-aforesaid, to wit, from Belle Air as aforesaid to the city of Columbus aforesaid, with all due care, diligence, & skill; and that said last-mentioned railroad, and the road-bed, the rails and track thereof, over which the said Celina Perrine was to be so carried and conveyed as aforesaid, then and there was, and should continue to be in good, sound,

safe, smooth, & perfect condition, for the running of cars thereon for the transportation of passengers, and that the said last-mentioned passenger car, and the wheels, axles, brakes, & the several parts thereof should be well and perfectly built, and sufficiently staunch and strong. And that the engineer, conductor, brakeman, and other employees in and upon, and in charge of the said passenger car, and the train to which the same was then and there attached, and the locomotive attached to, and by which the said last-mentioned train and passenger car was then and there moved, should be duly qualified, competent, sufficient, & skillful for, and diligent, careful, & skillful in the performance of their respective duties in and about the management and running of the said last-mentioned car and train, and the proper management, control, and running thereof. And although the said Celina Perrine was then and there received by the said defendant as such passenger, in, upon, and by the said last-mentioned passenger car as aforesaid, yet the said defendant, not regarding its duty in this behalf, did not use due care, skill, and diligence in carrying the said plaintiff Celina Perrine as afore-
37 said, and the said last-mentioned railroad, the road-bed, rails, and track thereof, over which the said Celina Perrine was to be carried and conveyed as aforesaid, then and there were not and did not continue to be in good, sound, safe, smooth, & perfect condition for the running of cars thereon for the transportation of passengers; and the said last-mentioned passenger car and the wheels, axles, brakes, and the several parts thereof were not well and perfectly built, and were not sufficiently staunch and strong; and the engineer, conductor, and brakemen, and other employees in and upon and in charge of the said last-mentioned passenger car and train, and the locomotive attached to and by which said last-mentioned train and passenger car were then and there moved, were not qualified, competent, sufficient, & skillful for, and diligent, careful, & skillful in the performance of, their respective duties in and about the management and running of the said last-mentioned car and train, and the proper management & control and running thereof; but, on the contrary thereof, by and through the negligence, unskillfulness, carelessness, want of diligence, and default of the said defendant, its servants and employees, the said last-mentioned railroad and the road-bed were so rough and uneven, and the rails thereof were old, worn, battered, bended, and crooked, laterally and vertically, and the track thereof was so untrue and uneven along and over which the said Celina Perrine was to be carried and conveyed as aforesaid, and, during all the time the said Celina Perrine was being carried & conveyed over the same, continued to be in so bad order as aforesaid, and in such an unsound, unsafe, rough, and imperfect condition for the running of cars thereon for the transportation of passengers, and the said last-mentioned passenger car and the wheels, axles, brakes, and the several parts thereof were so illy and imperfectly built and of imperfect materials, insufficiently staunch, and weak; and the engineer, conductors, brakeman, and employees in and upon and in charge of the said last-mentioned passenger car and train, & the locomotive attached to and
38 by which the said last-mentioned train and passenger car were then and there moved were so unqualified, incompetent, insufficient, unskillful, & negligent in the performance of their respective duties in and about the management and running of the said last-mentioned car and train, and for the proper management and control thereof, and so unskillfully, carelessly, & negligently run, managed, & controlled the same, that the said last-mentioned passenger car was, by and through the carelessness, negligence, and improper conduct of the

said defendant, thrown off the track and overturned, with the said plaintiff Celina Perrine therein as aforesaid, by means whereof one of the thigh bones of the said plaintiff Celina Perrine became and was fractured, and the said plaintiff Celina Perrine was thereby permanently injured and crippled for life, and the said plaintiff Celina Perrine was otherwise greatly bruised, wounded, and injured. And also, by means of the premises, the said Celina Perrine became and was sick, sore, lame, and disordered, and so remained and continued for a long space of time, to wit, from thence hitherto, during all which said time the said plaintiff Celina Perrine suffered & underwent great pain, and was hindered and prevented from transacting and attending to her necessary and lawful affairs by her during all that time to be performed & transacted. And thereby, also, the said plaintiffs were forced & obliged to, & did then and there pay, lay out, and expend divers large sums of money, amounting in the whole to the sum of one thousand dollars, in and about the endeavoring to accomplish the cure of said plaintiff Celina Perrine of the fractures, bruises, & injuries so received as aforesaid, and that said fractures, bruises, & injuries were received without any default or negligence on the part or behalf of the said plaintiff Celina Perrine, to wit, at the district aforesaid.

Wherefore the said plaintiffs say that they are injured & have sustained damages to the amount of twenty thousand dollars, and therefore they bring suit, &c.

PALMER, HOOKER & PITKIN,
Plaintiffs' Attorneys.

39 NOVEMBER 12, 1869.—This day came the defendant by its attorneys, and filed its demurrer to the amended declaration, as follows:

Demurrer to amended declaration.

Circuit court of the United States in and for the district of Wisconsin.

THE BALTIMORE & OHIO RAILROAD COMPANY }
ads.
GEORGE W. PERRINE AND CELINA PERRINE. }

And the said defendant by Finches, Lynde & Miller, its attorneys, comes and defends the wrong and injury when, &c., and says that the first, second, third, fourth, and fifth counts of the amended declaration in the said above-entitled cause, and each and all of them and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiffs to have or maintain their aforesaid action thereof against the said defendant, and this it, the said defendant, is ready to verify; wherefore, by reason of the insufficiency of the said first, second, third, fourth, and fifth counts of the said declaration in this behalf the said defendant prays judgment, and that the said plaintiffs may be barred from having or maintaining their aforesaid action thereof against it.

And the said defendant, according to the form of the statute in such case made and provided, states and shows to the court here the following causes of demurrer to the said first, second, third, fourth, and fifth counts of the said amended declaration, that is to say:

First. That the said counts and each of them show that the said defendant, at the time of the alleged grievance was, and still is, a corporation duly created, organized, and existing under and by virtue of the

laws of the State of Maryland, and said counts, and each of them, do not aver or show by what power or authority the said defendant as such corporation became or was a common carrier, possessing, using, and operating a railroad running from Bellair, in the State of
40 Ohio, to the city of Columbus in said State of Ohio.

Second. That it appears upon the face of the said several counts of said amended declaration, and each of them, that the said defendant is attempted to be made liable upon a contract or undertaking which it, the said defendant, (which is a corporation created and existing under the laws of the State of Maryland,) made with the plaintiffs, for injuries received by the plaintiff Celina Perrine, while being on and upon a line of railroad extending from Bellair, in the State of Ohio, to the city of Columbus, in the State of Ohio; and the said several counts of said declaration and each of them do not state by what right or authority the said defendant, as a corporation, created under and by virtue of the laws of Maryland, can or does possess, use, or operate a railroad entirely within the State of Ohio, and not within the limits of the State of Maryland, and because the said several counts, and each of them of the said declaration, do not show any lawful right or authority of the said defendant to possess, or use, or operate said line of railroad, or make any contract to receive or carry, or to agree to receive or carry, said plaintiffs or either of them, on said line of railroad mentioned in the said several counts of the said plaintiffs' declaration.

Third. Because it appears that the undertaking of the said defendant to transport or carry the said plaintiffs from Bellair, in the State of Ohio, to Columbus, in the said State of Ohio, was and is without authority of law and void, and said defendant cannot be made liable in law to said plaintiffs upon said contract, as alleged in said several counts.

Fourth. Because the said several counts and each of them of the said declaration, do not show any lawful right or authority conferred by the legislature of the State of Ohio, upon the defendant to act as common carriers, or to possess, use, or operate said line of railroad, or to contract to receive or carry said plaintiffs, or either of them, on the said
41 line of railroad in the said several counts of the said declaration mentioned, and that said defendant, by the allegations of the said declaration & the said several counts thereof, is sought to be made liable upon a contract or undertaking which is ultra vives & beyond its corporate capacity to make.

Fifth. That several distinct and independent causes of action are united in each of the said first, second, third, fourth, and fifth counts of the said declaration, and said counts and each of them, are bad for duplicity and double pleading; and that each of said counts ought and should have stated only one cause of action, and not united several causes of action in one count.

Sixth. That the said several counts of the said declaration & each of them seek to charge the said defendant with negligence or want of care in suffering and permitting one of the axles of a passenger car to be and remained cracked and broken, and also suffered and permitted the track of the railroad to be and remain in a defective and unsound condition, and to be used in such condition, and divers and other distinct and separate acts of neglect or omission; and also charged and thereby and therein have alleged and assigned in the said several counts, several separate and distinct acts of negligence, requiring different kinds of testimony and raising entirely different and distinct issues, and thereby uniting improperly several distinct acts or causes of action in one & the same count in said amended declaration, and thereby created

double pleading and a two-fold cause of action, and are bad for duplicity and double pleading in the same count of the said declaration.

Seventh. And said several counts and each of them of said declaration do not distinctly or positively aver that the the said car was overturned by reason of or on account of said broken axle or defective roadbed, or the alleged acts of negligence mentioned in the declaration, and there is no definite, certain, or positive allegation in said counts or either of them how or by what means the said car was thrown from the track, but it is stated argumentatively that "the said passenger
42 car was thrown from the track and overturned," without stating or aver'ing that the same was thus thrown or overturned by or on account of the alleged negligent acts theretofore stated & mentioned in the said several counts of said amended declaration.

Eighth. That the said several counts & each of them do not allege or aver that the said axle alleged to have been broken or cracked, was broken or cracked so that the same could have been discovered by any known means of discovery of breaks or cracks in railroad axles, or that the said break or crack was visible or known to the defendant, or could have been known by the exercise of any degree of care and skill; and because said counts & each of them seek to charge the said defendant with liability for a broken or cracked or defective axle without aver'ing that said crack or break was visible or could have been discovered by proper examination, or that the same were known to the defendant.

Ninth. That the said several counts in the said declaration & each of them, are in other respects uncertain, informal, & insufficient, &c.

FINCHES, LYNDE & MILLER.
Att'ys for Defendant.

I hereby certify, that in my opinion, the above demurrer is well-founded.

H. M. FINCH,
Of Counsel.

Joinder.

NOVEMBER 16, 1869.—This day came the plaintiffs, by their attorneys, and filed their joinder as follows:

U. S. circuit court, dist. of Wisconsin.

GEORGE W. PERRINE & CELINA PERRINE
vs.
THE BALTIMORE & OHIO RAILROAD COMPANY.

And the said plaintiffs say that the said first, second, third, fourth, & fifth counts of the said amended declaration and the matters therein contained, in manner and form as the same are above stated and set forth, are sufficient in law for them, the said plaintiffs, to have
43 and maintain their aforesaid action thereof against the said defendant, and the said plaintiffs are ready to verify and prove the same, as the court here shall direct and award; wherefore, inasmuch as the said defendant hath not answered the said first, second, third, fourth, & fifth counts of the said amended declaration nor hitherto in any manner denied the same, the said plaintiffs pray judgment & their damages, by reason of the damages and injuries sustained by them in the said amended declaration mentioned, to be adjudged to them, &c.

PALMER, HOOKER & PITKIN,
P'l'ff's Att'ys.

Hearing of demurrer.

DECEMBER 28, 1869.—This day the demurrer of the defendant to the plaintiffs' amended declaration came on to be heard and was argued by the counsel of the parties when the court took the same under advisement.

And afterwards, to wit, at a stated term of said court, begun and held according to law, at the city of Milwaukee, in said district, on the second Monday, being the eleventh day of April, A. D. 1870, the following proceedings were had to wit:

Order overruling demurrer.

GEORGE W. PERRINE & CELINA PERRINE, his wife, *vs.* BALTIMORE & OHIO RAILROAD CO. } At law.

APRIL 11, 1870.—This day came the parties, by their counsel, and on consideration of the demurrer to the amended declaration it is ordered by the court that the said demurrer be, and hereby is, overruled. And came the defendant, by its counsel, and filed its plea to said declaration, as follows:

Plea to am'd declaration.

U. S. circuit court, dist. of Wisconsin.

THE BALTIMORE & OHIO RAILROAD COMPANY, *ads.* GEORGE W. PERRINE, ET ALS.

44 And now the said defendant, by Finches, Lynde & Miller, its att'ys, and as to the amended declaration of the said plaintiffs, comes and defends the wrong and injury, when, &c., and says that it is not guilty of the said supposed above grievances in the said declaration mentioned or any or either of them, or any part of them in manner and form as the plaintiffs have above thereof complained against it; and of this it, the said defendant, put itself upon the country, &c. And the plaintiffs do the like.

FINCHES, LYNDE & MILLER,
Def'ts Atty's.

And afterwards, to wit, on the sixth day of said term, to wit, on the sixteenth day of April, A. D. 1870—

Present and presiding, the Honorable Thomas Drummond, circuit judge, and the Honorable Andrew G. Miller, district judge—

The following proceedings were had, to wit:

Trial.

GEORGE W. PERRINE & CELINA PERRINE, his wife, *vs.* BALTIMORE & OHIO RAILROAD COMPANY. } At law.

This day came the plaintiffs, by their counsel, and withdrew the decla-

ration filed February 1st, 1869. And came the parties, by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same who came, to wit: David Crofoot, H. C. Carpenter, C. L. Annis, S. E. Lefferts, James G. Henshall, John S. Mitchell, Charles Copeland, Frederick J. Brande, Alexander Rennie, Isaac Loper, John Whitney, and Edward Elderkin, twelve free, honest, and lawful men of the district, who were severally sworn and empanneled, and the trial not being concluded the same was adjourned until Monday morning next.

APRIL 18, 1870.—This day came the parties, by their counsel, and the trial of the issue herein was resumed, and, not being concluded, the same was adjourned until to-morrow morning.

45 APRIL 19, 1870.—This day came the parties, by their counsel, and the trial of the issue herein was resumed, and not being concluded, the same was adjourned until to-morrow morning.

Verdict.

APRIL 20, 1870.—This day came the parties, by their counsel, and the trial of the issue herein was resumed. And the jurors of the jury aforesaid being charged by the court on their said oaths, respectively do say that the defendant is guilty in manner and form as the plaintiffs have herein declared against it, and assess the damages to the said plaintiffs at nine thousand dollars.

And came the defendant's counsel, and moved the court for a new trial, for reasons filed, as follows:

Motion for new trial.

U. S. circuit court, district of Wisconsin.

GEORGE W. PERRINE ET ALS.
vs.
THE BALTIMORE AND OHIO RAILROAD Company.

And now comes the said defendant, by Finches, Lynde & Miller, its att'ys, and moves the court now here to set aside the verdict in this cause, as contrary to law and against the evidence, and because the damages are excessive.

FINCHES, LYNDE & MILLER,
Def't's Att'ys.

And now at this same term, to wit, October term, A. D. 1870, and on the twenty-eighth day thereof, to wit, on the third day of November, A. D. 1870—

Present and presiding, the Honorable Thomas Drummond, circuit judge, and the Honorable Andrew G. Miller, district judge—

The following proceedings were had, to wit:

Hearing of mo. for new trial.

GEORGE W. PERRINE & CELINA PERRINE, his wife,
vs.
BALTIMORE & OHIO RAILROAD COMPANY.
} At law.

46 This day came the parties, by their counsel, and the motion of

the defendant for a new trial came on to be heard, and was argued by Mr. H. M. Finch, for, and by Mr. H. L. Palmer, against, the same, and submitted, when the court held the same under advisement.

And afterwards, to wit, on the thirty-first day of said term, to wit, on the seventh day of November, A. D. 1870—

Present and presiding, the Honorable Thomas Drummond, circuit judge, and the Honorable Andrew G. Miller, district judge, the following proceedings were had, to wit:

Order granting new trial unless pl'ff remit $3,000 *of verdict.*

GEORGE W. PERRINE & CELINA PERRINE, his wife, *vs.* BALTIMORE & OHIO RAILROAD COMPANY. } At law.

This day came the parties, by their counsel, and, on consideration of the motion of the defendant for a new trial, it is ordered by the court that a new trial be, and hereby is, granted, unless plaintiff's counsel consent, by Monday next, to remit three thousand dollars of the verdict.

And afterwards, to wit, on the thirty-third day of said term, to wit, on the fourteenth day of November, A. D. 1870, the following proceedings were had, to wit:

Pl'ffs remit $3,000.—*Motion for new trial overruled & judgment.*

GEORGE W. PERRINE & CELINA PERRINE, his wife, *vs.* BALTIMORE & OHIO RAILROAD COMPANY. } At law.

This day came the plaintiffs, by their counsel, Mr. Palmer, and, pursuant to an order of court, remitted three thousand dollars of the verdict in this case. Whereupon it is ordered by the court that the motion of the defendant's counsel for a new trial be, and hereby is, overruled.

And it is considered and adjudged by this court now here, that the said plaintiffs do have and recover of the said defendant, The Baltimore and Ohio Railroad Company, the sum of six thousand dollars damages, together with five hundred and twenty-four dollars and five cents,
47 their costs about their said suit in this behalf by them expended, and that they have execution therefor.

Judgment roll signed November 14th, A. D. 1870.

EDWARD KURTZ, *Clerk.*

Damages	$6,000 00
Costs	524 05
	$6,524 05

Judgment roll filed November 14th, A. D. 1870, at 5 o'clock p. m.

EDWARD KURTZ, *Clerk.*

And afterwards, to wit, on the thirty-seventh day of said term, to wit, on the eighteenth day of November, A. D. 1870, the following proceedings were had, to wit:

GEORGE W. PERRINE & CELINA PERRINE, HIS wife,
vs.
BALTIMORE & OHIO RAILROAD COMPANY. } At law.

This day came Alexander Mitchell and David Ferguson, of the city of Milwaukee, and filed their bond in the penalty of twelve thousand dollars, conditioned that the defendant shall prosecute a writ of error to effect, and answer all damages and costs if it fail to make its plea good; which bond is approved by the district judge, and is, as follows:

Bond for supersedeas.

Know all men by these presents that we, Alexander Mitchell and David Ferguson, are held and firmly bound unto George W. Perrine and Celina Perrine in the full and just sum of twelve thousand dollars to be paid to the said George W. Perrine and Celina Perrine, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 17th day of November, in the year of our Lord one thousand eight hundred and seventy.

Whereas, lately at a term of the circuit court of the United States of America for the eastern district of Wisconsin, in a suit depend-
48 ing in said court between George W. Perrine and Celina Perrine, plaintiffs, and The Baltimore & Ohio Railroad Company, defendant, a judgment was rendered against the said Baltimore & Ohio Railroad Company, and the said Baltimore & Ohio Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said George W. Perrine and Celina Perrine, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Baltimore & Ohio Railroad Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

AL'X MITCHELL. [L. S.]
D. FERGUSON. [L. S.]

Sealed and delivered in presence of—

Approved by—

A. G. MILLER, *District Judge.*

Whereupon it is ordered by the court that execution be superseded, and thereupon a writ of error and citation issued and copy of said writ of error lodged for defendant in error.

Bill of exceptions.

DECEMBER 17, 1870.—Bill of exceptions filed as follows:

U. S. circuit court, district of Wisconsin.

GEORGE W. PERRINE AND CELINA PERRINE
against
THE BALTIMORE AND OHIO RAILROAD COMPANY.

Be it remembered that, on the sixteenth day of April, A. D. 1870, at

a term of the circuit court of the United States in and for the dis-
49 trict of Wisconsin, held in the court-room of said court, in the city of Milwaukee, and State of Wisconsin, by the Hon. Thomas Drummond, circuit judge, and the Hon. Andrew G. Miller, district judge, came as well the said plaintiffs, by Messrs. Palmer, Hooker & Pitkin, their attorneys, and the said defendant, by Finches, Lynde & Miller, its attorneys, and the said cause, being reached in its order, was called for trial, and the said parties being in said court and ready for trial, a jury of twelve good and lawful men was duly called, sworn, and empanneled.

And thereupon the said plaintiffs, to maintain the issue on their part, did offer to read, and did read in evidence the deposition of one H. J. JEWETT, which deposition contained evidence showing, or tending to show, that he, the said Jewett, was fifty years of age; his occupation, president of the Little Miami Railroad Company, and that his residence was at Zanesville, Ohio; that there was a company known as the Baltimore and Ohio Railroad Company, which had been in existence for many years; that there was a line of railroad extending from Bellaire, in the State of Ohio, via Spencer's station, to the City of Columbus, in the same State; that he, said witness, was acquainted with said line in the month of January, 1868, which said line & road was at that date. and still is, owned by The Central Ohio Railroad Company; that said line of road was owned by said last-named company during the years 1866, 1867, and 1868; that said witness was the president thereof. William Wing was secretary, and Daniel Applegate, treasurer; that the same persons were officers thereof in January, 1868, and had been for many years previous thereto, and still were the officers of the said last-named railroad company; that the said line of railroad was operated, run, and managed by the Baltimore and Ohio Railroad Company.

And thereupon the said plaintiffs, by their said counsel, offered to read the following interrogatory and the answer thereto, to wit: If you answer that said line of railroad, in the month of January, 1868, was used and operated by The Baltimore and Ohio Railroad Company,
50 state from whom, what person, company, or corporation said Baltimore and Ohio Railroad Company leased the same, and when it was so leased, and for how long; state the date of said lease, and whether or not the said defendant remained and continued in possession of said line of railroad up to the twenty-sixth day of January, 1868, and how long? Have you the contract or lease to The Baltimore and Ohio Railroad Company of said line of railroad, or a copy of the same, in your possession or under your control? If so, attach the same or a copy of the same to your deposition. If you have not the same, or either of them, in your possession or under your control, state the terms of said lease as fully and particularly as you can.

And to which said question said defendant, by its said counsel, did then and there object, and did then and there insist that said question and the answer thereto ought not to be read for the reason that the declaration avers that the defendant is a corporation, created under and by virtue of the laws of the State of Maryland, and as such corporation it has no power, by its charter or otherwise, to lease, use, or operate a line of railroad from Bellair, via Spencer's station, to Columbus, Ohio, being a line of railroad exclusively within the State of Ohio, which objection the said presiding judge did then and there overrule, and did then permit and allow the answer of the said witness to be read, and the same was read, and to which said ruling and decision of the said presiding judge the said defendant did then and there except.

And the said answer of said witness to said question was read, as follows: The Baltimore and Ohio Railroad took possession of The Central Ohio Railroad on the 1st of September, 1866, by virtue of a contract, a copy of which is hereto attached, marked "A." Said Baltimore and Ohio Railroad Company has been in possession of and operating The Central Ohio R. R. by virtue of said contract from that time to
51 the present, and is still operating it.

And thereupon the said plaintiffs offered to read in evidence the copy of the said lease attached to the deposition of the said witness and referred to in his said deposition. The defendants waived the production of the original lease, and allowed the copy to be used with the same force and effect as the original, and thereupon the said defendant, by its counsel, did then and there object to the introduction and reading of the said copy of said lease in evidence, for the reasons—

1st. That there was no evidence showing that The Baltimore & Ohio Railroad Company, or its stockholders had ever authorized the execution of said lease, and 2nd, that the declaration averring that The Baltimore and Ohio Railroad Company was a corporation created by the laws of Maryland; that as such Maryland corporation, it had no power or authority to make or authorize to be made the said lease; which said objection was then and there overruled by the said presiding judge, and said lease was permitted and allowed to be read in evidence and was read, and to which said ruling and decision of the said presiding judge, said defendant did then and there except.

And said plaintiffs, under the same objection & subject to the same waiver, offered and read in evidence the records or a copy of them, of a meeting of the stockholders of The Central Ohio Railroad Company in favor of approving and ratifying the said lease, and to the reading of which records in evidence, said defendant did then and there duly except.

Said lease and the said proceedings of the said stockholders of The Central Ohio Railroad Company, are hereto attached, and marked Exhibit No. 1, and made part of this bill of exceptions.

And said plaintiffs called several witnesses, some of whom were passengers on the train, whose testimony tended to show that the road bed of the said line of railroad was defective, at and near the place
52 of the accident, that the iron rails were worn and the ends battered, that the train was behind time, and running at a high rate of speed, and that the axle broke, in consequence of which the train of cars or a portion of them were thrown down the bank; that said axle had the appearance of having been fractured for some time, that said fracture was apparently three quarters of the way across the axle; that the axle broke off about two inches or two inches and a half from the inside of the hub of the wheel; and one witness testified that just before the cars left the track, she felt a heavy jar and bang at the rear door, discovered that there was a foot or a foot and a half of a rail broken and out of place; that the conductor made no effort to stop the train; also gave evidence showing that Mrs. Perrine was seriously hurt; her thigh bone broken; and that she suffered great pain, and was under medical or surgical treatment for some months; that a ligamentous union had formed but the injury was permanent, and there would be a permanent shortening of the limb; and that said injury was received at the time of the said accident, and in consequence of the accident.

And the said plaintiffs further offered to show, and did show, that the tickets sold to the plaintiffs and other passengers on the said train pur-

ported to be issued by, and on their face had the words, Baltimore and Ohio Railroad Company; that said company employed and paid all of the employees and owned and paid for the rolling stock and cars used on that line of railroad; and that the said company received the revenues of the road; and paid all of its expenses.

To all of which said testimony in said last paragraph, said defendant did then and there duly object to being given in evidence for the reason that said defendant had no right, power or authority so to do, by its charter or otherwise; and because there was no evidence that said defendant had any authority so to do, which objection was over-
53 ruled by the presiding judge and the evidence admitted, and to which said ruling and decision said defendant did then and there except.

Said defendant, on its part, called several witnesses, who gave testimony tending to show that the road-bed was in good and perfect order; that the iron rails were sound, and well spiked down; that ten or twelve different trains passed daily over the line of the road; that the ends of the rails were not battered so as to at all affect the safe operating of the road; that the line of the road was divided into divisions of about five miles to each division; that there were at the time of the accident eight to ten men employed on that portion of the section on which the accident occurred; that the employees were old and experienced employees, skilled in their duties, and had been for years employed on that line of road; that track-walkers of skill and experience walked the entire line of the road after the passage of each train; that each track-walker had a beat of a mile to a mile and half to walk; that the track-walkers had passed over the line the evening of the accident, prior to the passage of the train; that there were no broken rails; that the track was, to all appearance, in its usual condition, and safe—no defects therein which were visible; that the train at the time of the accident was just approaching Spencer's station; that the signal for the station had been sounded; that the train was at the time of the accident proceeding at the rate of about twelve or fourteen miles an hour, when suddenly the rear passenger-car was thrown from the track; that there was no conceivable space of time from the discovery that the car was off the track before the car went down the bank; that the brakes were whistled down, and rear brakesman had just set his brake as car went down the bank; that the real cause of the accident was a broken axle; that the axle was examined after
54 the accident; that there was no appearance of an old flaw or any flaw in the axle; that the break occurred just within the hub of the wheel, leaving a short end in the wheel; that the break was fresh, clean break, so far as it could be discovered. The defendant also gave evidence tending to prove that the axles of that car were manufactured of the best of materials, and of an approved size and standard, and properly, and by the Zanesville Axle Company; that the reputation of the axles manufactured by said company among railroad men was A No. 1; that the said axles and said car were, as far as they could be, daily subjected to constant and thorough inspection; that the car had been duly and properly inspected before said car left Bellair; that it was usual and customary to inspect the passenger cars on said line at Columbus, Zanesville, and Bellair each time they came to said-named places; that there was no visible defect in the said car or axle; that the break was at such a part within the hub of the wheel that even if there had been a flaw in the axle, it could not have been discovered without taking the wheel off, which could not be done without taking

the wheels & axle out from under the car and into the shop, and applying a tremendous hydraulic pressure; that, to all outward and visible appearance, said car and said axle were roadworthy in every respect; that the weather was cold; that the employees on the train were all careful, prudent, and cautious persons, and most of them had been a long time in the employ of the company on that line. Much testimony was given by experts as to the axle; the strain upon it; the impossibility of its breaking an inch or two inches and a half from the hub on the inside of the wheel; the impossibility of the train running any considerable distance, if the road-bed was defective, with said axle broken; the speed of the train.

55 Said plaintiffs on the trial, among other things, offered to call, and did call the plaintiff Mrs. CELINA PERRINE, the wife of the said plaintiff George W. Perrine, and did offer to prove by the said Mrs. Perrine facts and circumstances connected with the accident, the nature of the injury she received, the pain she suffered, and the effect of the injury upon her general health, &c. To which said offer the said defendant, by its said counsel, did then & there duly object for the reason that the said Celina Perrine was the wife of the said George W. Perrine, and that she was not a competent witness in a suit in which she and her husband were parties; which said objection was then and there overruled by the said presiding judge, and said Mrs. Perrine was allowed to be sworn as a witness, and to testify, and did testify to matters and facts important and material to the issue between the parties.

And the said plaintiff GEORGE W. PERRINE, was called as a witness, and was offered as such witness to prove by him the facts and circumstances of the accident; the examination by him of the broken axle, and its appearance—and that it had the appearance of an old flaw; the speed of the train; the nature, character, and extent of the injury received by Mrs. Perrine. To all of which said testimony on the part of said plaintiffs being given by said plaintiff George W. Perrine, the said defendant duly and properly objected to, for the reason that the said George W. Perrine was the husband of the said Celina Perrine and was not a competent witness in the cause wherein she was a party; which said objection was overruled, and said witness was allowed to testify, and did testify as to each and all of the aforesaid facts and circumstances; and to which ruling and decision of the said presiding judge the said defendant did then and there duly except.

56 And, thereupon, the testimony being closed, the said defendant, by its said counsel, did then and there ask the said presiding judge to charge the jury that there was no sufficient evidence of the power or authority of the defendant to use, operate, and control the line of railroad from Bellair to Columbus, or to ask, demand, or receive fare from passengers traveling on said line of railroad; which said charge said presiding judge did then and there refuse to give to the jury; and to which said refusal to give said charge said defendant did then and there except.

And said defendant, by its said counsel, did further ask the said presiding judge to instruct the jury that, as it is averred in the declaration that the defendant is a corporation created by the laws of the State of Maryland, it has no authority to conduct, control, or operate a line of railroad exclusively within the State of Ohio, or to make a

contract to transport or ca'ry passengers over said line of railroad; and that the contract made by said defendant to transport the plaintiffs on said line of railroad exclusively within the State of Ohio is void, and the plaintiffs cannot recover in this action upon said contract for any breach thereof; which said instruction said presiding judge did then and there decline and refuse to give to the jury; and to which said refusal to give the same said defendant did then and there except.

Said presiding judge did thereupon charge the jury as to the law applicable to the case, touching the duties, obligations, and liabilities of common carriers of passengers for hire, and to which charge there was no exception on the part of the defendant.

And because the said exceptions do not appear of record in this cause we have hereto set our hands and seals to this bill of exceptions at the request of the respective parties, this twenty-first day of November, A. D. 1870.

A. G. MILLER. [SEAL.]

57 "A."—*Articles of agreement between The Central Ohio Railroad Company, as reorganized, and The Baltimore & Ohio Railroad Company. November* 21, 1866.

58 "A."—ARTICLES OF AGREEMENT.

Articles of agreement made this twenty-first day of November, in the year eighteen hundred and sixty-six, by and between The Central Ohio Railroad Company, as reorganized, of the first part, and The Baltimore and Ohio Railroad Company, of the second part, in order that the latter company may take possession of, operate, and maintain The Central Ohio Railroad, in the manner, for the time, and upon the terms hereinafter agreed upon.

The said parties, each in consideration of the promises and agreements of the other, do hereby agree with each other as follows:

ARTICLE 1. The said party of the second part shall take, have, and hold possession of the entire railroad belonging to said party of the first part, and all the works, machinery, tools, fixtures, and real estate held in connection therewith, and used or necessary for the operations thereof, and all the locomotives, engines, cars, and other rolling stock belonging to said party of the first part, such possession to commence on the first day of December next, (eighteen hundred and sixty-six,) and to continue during the full term of twenty years, unless sooner terminated in pursuance of the next article.

ARTICLE 2. The said term and possession may be terminated at the end of the first five years thereof, at the option of either of said parties, provided that the party electing so to terminate it shall have given written notice of such election to the other party at least twelve (12) months before the end of said five years.

ARTICLE 3. During the continuance of said term the said party of the second part shall maintain and work the said railroad, and carry on the business connected therewith, in the corporate name of said party of the first part; and the latter agrees that the party of the second part shall have a right so to use such corporate name. But the said party of the first part agrees (whenever required by the other party) to make, execute, and deliver to the said party of the second part, in due form of law,

59 a lease of said railroad and other property for the said term of twenty years, terminable at the end of five years, at the option of

either party, in like manner as aforesaid, and conforming to the other provisions of this contract, so that the said party of the second part may thenceforth possess, maintain, and work the said railroad, and carry on the business connected therewith, in its own name and right, as lessee. If any additional legislation shall be deemed necessary to authorize such lease, the party of the first part agrees to apply for it, and to obtain the same, if it can be had.

ARTICLE 4. During the continuance of said term (of possession) the said party of the second part shall have the possession and use of said railroad and other property, and shall maintain and work the same at its own expense, and as if it were the owner thereof, being entitled to receive all moneys arising from such possession, use, and working, and paying the expenses attending the same, and paying all taxes (levied) and assessed on said property during the term, whether by the United States, the State of Ohio, or any city, county, township, or any other authority, provided that it shall not be obliged to pay more than thirty-five thousand dollars of such taxes, in the aggregate, for any one year. In consideration of its liability under this agreement, the said party of the second part shall be entitled to retain for its own use and benefit sixty-five per centum of the gross earnings and receipts of or from said railroad and other property during the first five years of said term, and sixty per centum of such gross earnings and receipts thereafter.

ARTICLE 5. The expenses to be paid by the said party of the second part, under the fourth article, (besides the taxes therein provided for,) shall be the expenses of maintaining and working said railroad pursuant to this contract; and all claims, damages, and demands arising out of, incident to, or resulting from, such maintenance or working, and from such claims damages, and demands, the said party of the second part shall hold the said party of the first part harmless. The said railroad and other property shall be maintained and returned to the said party of the first part in as good order and condition as the same shall appear to be when delivered to the said party of the second part, according to a schedule and description thereof to be made at the time of the delivery thereof to the said party of the second part; or if any of such property, equipment, rolling stock, or machinery be not so returned to the said party of the first part at the expiration of said term, property of the same kind, and in equally good condition, shall then be returned in place of it; it being understood that said party of the second part, if by them deemed necessary to an economical working and management of said road may by sale or otherwise dispose of said machinery and rolling stock, and replace the same, being bound, as above mentioned, to return machinery and rolling stock equal in quantity and value to that so disposed of.

ARTICLE 6. If, during said term, the party of the second part shall, in consequence of an increase of business, arrange with the party of the first part to place on said railroad an additional amount of rolling stock, such additional amount shall belong to the said party of the second part, who shall have full right and privilege to remove the same during or after said term; provided that said party of the first part shall have the right at a'y time during the existence of, or at the termination of, this contract, to take such additional rolling stock on paying to said party of the second part the appraised value thereof; and if the parties hereto cannot agree upon such value, the same shall be ascertained in the mode and manner provided in article eighth of this agreement, as to material, and so forth.

ARTICLE 7. If it shall be deemed by the parties hereto necessary during

said term to acquire additional real estate, erect new buildings, or lay double track, special provision is to be made for the same in such manner as the parties may hereafter agree upon.

ARTICLE 8. At the time when possession shall be delivered as aforesaid to the said party of the second part the material and supplies, furniture, tools, and implements other than fixed machinery and rolling stock then on hand for the use of said railroad, and owned by the said party of the first part, shall be appraised at the cost thereof, or, (where that cannot be ascertained, or the same has been used, worn, or decayed,) at a fair market value, and the said party of the second part shall purchase and pay for the same at such appraised value, such appraisement shall be made by two disinterested persons, one of them to be selected by each party, and if those two persons cannot agree, they shall select a third, who shall determine the appraisement. The schedule and description of property provided for in the fifth article, (if the parties do not agree upon the same,) shall be in like manner referred to the determination of persons to be chosen in the same way.

61 ARTICLE 9. During said term said party of the second part shall quarter-yearly, except as hereinafter mentioned, pay to said party of the first part the balance of said gross earnings and receipts from said railroad and other property, (after deducting sixty-five per centum thereof,) during the first five years, and sixty per centum thereof afterwards, as before provided, as soon after the end of each quarter as the amount received during the quarter can, with reasonable diligence, be ascertained, and the said party of the second part agrees and guarantees that the earnings thus to be paid to the party of the first part shall, in the aggregate for each year during said term, be at least one hundred and sixty-six thousand dollars, ($166,000,) the said party of the second part being bound to pay and make good any deficiency of that amount annually, without being entitled to reimbursement on that account. The said one hundred and sixty-six thousand dollars, ($166,000,) or so much thereof as may be necessary, is to be applied to the payment of the interest coupons hereafter accruing on the bonded debt of the first party, and to the sinking fund in semi-annual payments, beginning with the first of March next; and payment thereof by the second party, and the delivery to said first party of said coupons, and evidence of payment of said sinking fund, shall be deemed payment within the meaning of this agreement to the first party, to the amount thus applicable to the interest and sinking fund; the party of the second part shall be bound to make payment semi-annually only, and not quarterly, as aforesaid.

ARTICLE 10. The said party of the second part shall provide and pay to the said party of the first part, or the creditors entitled thereto, (including the party of the second part,) out of the funds mentioned in the next article of this agreement, a sufficient sum or sums of money to pay off all existing claims against said party of the first part, (not including its bonded debts,) all orders which may be made by the circuit court of the United States for the southern district of Ohio, upon the receiver of that court, and for the payment whereof the receiver holds the obligation of said party of the first part, but the whole amount to be paid by said party of the second part under this article, shall not exceed the sum due the party of the second part for engines, and one hundred thousand dollars ($100,000) in addition thereto.

62 ARTICLE 11. The said party of the second part shall have a right to apply whatever amount it shall be liable to pay for material and supplies under the eighth article, so far as necessary, to the

payments to be made under the tenth article, and if the same be not sufficient to provide for the payments to be made under the tenth article, the balance which shall be payable under that article or coming to the said party of the second part, may be deducted by the said party of the second part out of any of the gross earnings and receipts, which after the payment of said one hundred and sixty-six thousand dollars ($166,000) may be due to the party of the first part under the ninth article.

ARTICLE 12. The said party of the second part shall keep the accounts relating to the working of said railroad, and the other business subject to this contract distinct from all accounts relating to the working of its own road, and shall furnish copies thereof to the said party of the first part when desired, and the same shall be open at all proper times to examination by the proper officers of said party of the first part.

ARTICLE 13. In operating said railroad, the party of the second part shall encourage the local business thereof, and so to adjust its local rates, and the working of the road as to develope in the most thorough manner such local business and to obtain therefrom the greatest amount of revenue. It shall also be the duty of said party of the second part to endeavor to increase the through business over the line of said railroad, treating that road as favorably in all respects as if it were a part of its own road, and securing to it its full share of all through rates.

ARTICLE 14. It is further agreed that the party of the second part shall take back the eleven (11) engines heretofore purchased by the party of the first part from said party of the second part at the cost price thereof—the party of the first to pay to the said party of the second part interest on said cost price from the date of the delivery of said engines to said first party to the first day of December, eighteen hundred and sixty-six, (1866,) at the rate of seven per centum per annum, less the amount expended by the said first party in repairing and adapting said engines to the road of the said party of the first part.

ARTICLE 15. That the said party of the second part shall purchase from the said party of the first part its remaining bonds of the
63 new issue, estimated to be seventy-six (76) in number, at par; the trustees to purchase the same from the said party of the second part at the same price, as needed for the purposes of the sinking fund.

ARTICLE 16. It is agreed that the party of the first part shall pay to the party of the second part for the use of the additional rolling stock which it may be necessary to place upon said road as provided in article six, (6,) so long as the same may be in use and belong to said second party, rates not exceeding the following, viz: for each engine per year one thousand dollars, ($1,000,) and each freight car per year, seventy-two dollars, ($72.) The mileage earned by said additional rolling stock and the rolling stock now belonging to said party of the first part on any and all roads other than the road of the first named party, to be added to the general earnings of the road, and out of which the said party of the first part is to receive the same per centage as it receives from the gross earnings of the road as provided in article nine, (9.)

ARTICLE 17. The said party of the first part shall maintain its corporate organization at its own expense.

In testimony whereof, H. J. Jewett, the president of The Central Ohio Railroad Company, party of the first part, and John W. Garrett, the president of The Baltimore and Ohio Railroad Company, party of the

second part, have hereunto affixed their names, and caused the corporate seals of their respective companies to be hereunto attached.

The Central Ohio Railroad Co.

By H. J. JEWETT, *President.*

Attest:

W'M WING, *Secretary.*

The Baltimore and Ohio Railroad Co.

By J. W. GARRETT, *President.*

Attest:

J. I. ATKINSON, *Treasurer.*

64 ZANESVILLE, OHIO, *Nov.* 21, 1866.

At a meeting of the stockholders of The Central Ohio Railroad Company, as reorganized, held this day, it was—

Resolved, by the meeting, that the vote of the stockholders be taken upon the approval of the foregoing contract, to be taken as follows: Those who are in favor of said contract to endorse on their votes, "For contract, yes," and those who disapprove it, "For contract, no."

Upon canvassing the votes it was found that forty-three thousand two hundred and thirteen were cast, "For contract, yes," and none "For contract, no."

The following resolution was then offered for adoption:

Resolved, That any future or further arrangements necessary to carry into effect, or necessary for the execution and performance by The Central Ohio Company of any of the stipulations of the agreement between The Central Ohio and Baltimore and Ohio Railroad Companies this day submitted to the stockholders of The Central Ohio Company, and any modifications or additions to said agreement may be made and adopted for and on behalf of The Central Ohio, as reorganized, and for and on behalf of the stockholders thereof by the board of directors of said Central Ohio Company, provided that not less than ten (10) of the directors assent thereto, and ten (10) days notice be given through the post office, or personally to each director previous to such meeting, of the general objects of the meeting; and such arrangements, modifications, or additions reduced to writing, and so adopted and entered upon the minutes of the board, shall be as binding upon said company and its stockholders as if submitted to and duly approved by said stockholders.

Whereupon it was resolved by the meeting that the vote of the stockholders be taken upon the approval or disapproval of the above resolution, to be taken as follows: Those in favor of the resolution to indorse on their votes, "For resolution, yes;" and those disapproving the same, "For resolution, no."

After canvassing the votes, it was found that forty-three thousand two hundred and fifteen votes were cast, "For resolution, yes;" and no votes cast in the negative.

So the contract and resolutions were unanimously adopted.

It is stipulated that the foregoing copy of the record and proceedings of the stockholders of The Central Ohio Railroad Company, as re-
65 organized, may be read on the trial of the case of G. W. Perrine & wife, with the same force and effect as if the record had been produced and the secretary called, subject to such objections as might or could be taken to said originals, or the reading of the originals.

FINCHES, LYNDE & MILLER,
Def'ts Att'ys.

66 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, ss:

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, and are correct transcripts therefrom now on file, and remaining of record in my office, being a full & complete copy of the record & proceedings in the suit of George W. Perrine et al. vs. Baltimore & Ohio Railroad Company, as a return to the writ of error hereto annexed.

In testimony whereof, I have hereunto set my hand, and duly affixed the seal of the said court at the city of Milwaukee, in said eastern district of Wisconsin, this thirtieth day of December, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the said United States the ninety-fifth.

[SEAL.] EDWARD KURTZ, *Clerk.*

67 UNITED STATES OF AMERICA, ss:

[SEAL.] The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin, before you, between George W. Perrine & Celina Perrine, plaintiffs, and The Baltimore & Ohio Railroad Company, defendant, a manifest error hath happened, to the great damage of the said Baltimore & Ohio Railroad Company, as by the complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error that of right and according to law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

EDWARD KURTZ,
Clerk U. S. Circuit Court, East'n Dist., Wis.

Filed November 18, 1870. E. Kurtz, clerk.

68 The United States of America to George W. Perrine & Celina Perrine, his wife, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States of America for the east-

ern district of Wisconsin, wherein The Baltimore & Ohio Railroad Company is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this eighteenth day of November, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

[SEAL.] A. G. MILLER,
District Judge.

We accept service of above citation this 22nd day of November, A. D. 1870.

PALMER, HOOKER & PITKIN,
Pl'ffs' Att'ys.

(Indorsed on cover:) No. 459. The Baltimore and Ohio Railroad Company, plaintiffs in error, vs. George W. Perrine and Celina Perrine, his wife. E. Wisconsin C. C. U. S. Filed 4th January, 1870.